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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/672,133

09/26/2003

Stephen A. Ewald

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EXAMINER

FADOK, MARK A

ART UNIT

PAPER NUMBER

3625

MAIL DATE

DELIVERY MODE

12/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/672,133	Applicant(s) EWALD, STEPHEN A.	
	Examiner MARK FADOK	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/13/2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-16 and 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 6/26/2009, which was received 10/13/2009. Acknowledgement is made to the amendment to claims 1,3,5,6,9,11,12,18, and 19, leaving claims 1-3,5-16 and 18-22 as pending in the instant application. Applicant's amendment and remarks have been carefully considered but were not found to be persuasive. Therefore the previous office action is restated below modified as necessitated by amendment.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. While the specification is enabled for an ordering method that includes purchase information that is not "overtly and explicitly" identified in the broadcast media (see applicant's specification para 0025). The specification does not support that no information is provided in the broadcast that is used when fulfilling the purchase order as is claimed in the independent claims.

The following is a quotation of the forth paragraph of 35 U.S.C. 112:

Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

Claims 5 and 18 are rejected under USC Fourth paragraph as not limiting the independent claim that it is dependent from because the feature “wherein the broadcast radio media include information about the purchase of goods and services.” Is already present in the independent claim and is therefore not further limiting.

Claims 6 and 19 are rejected under USC Fourth paragraph as not limiting the independent claim that it is dependent from because it removes the feature “wherein the broadcast radio media does not include information about the purchase of goods and services” thus removing a limitation and thus broadening the claim impermissibly.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,5-10,12-13,16,18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen (US 6,957,041) and further in view of Bolleman (US 6,286,063) and further in view of APA (applicant's admitted prior art in US PG PUB 20050071240, para 0020).

In regards to claims 1,2,5-10,12-13,16,18-22, Christensen teaches system for purchasing goods and services linked with broadcast media, comprising:

one or more broadcast radio receivers configured to receive in-band broadcast radio media (FIG 21, item 200) and

Christensen teaches that information is sent to a receiver using RBDS/RDS which provides the user with the name of the current song being played, but does not explicitly state that the media is in-band within the broadcast media stream. Bolleman teaches RDS and RBDS systems contain broadcast signals that can contain programming signals or information along with the broadcast audio signal and that examples of broadcast systems which can broadcast programming signals along with broadcast audio include digital FM radio (high definition radio), in-band on-channel (IBOC) and Eureka-147. As identified by Bolleman these methods of broadcasting were well known in the art at the time of the instant invention. It would have been obvious to provide the broadcast with the information to purchase the product, since this is a predictable solution and one of ordinary skill in the art at the time of the invention could have pursued this known potential solution with a reasonable expectation of success.

each receiver further configured to selectively receive a purchase request and record the purchase data for goods and services that a person purchases relating to the broadcast media (col 5, lines 1-8); and

one or more servers configured to selectively receive and verify purchase data sent from the one or more receivers wherein the purchase data containing information that upon verification at the one or more servers, the purchase accomplishable without further interaction from the person (col 5, lines 8-23) ;

wherein upon verification of the purchase data, the purchased goods and services are directly downloaded to the broadcast radio receiver (col 5, lines 25-30).

Please also note that applicant's own specification states that "the delivery of the goods or service can be accomplished through any method known in the art...direct download...", which the examiner understands to be applicant's admission that this feature was old and well known in the art at the time of the invention.

Claims 3, 11 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen in view of Bolleman in view of APA and further in view of Moskowitz et al.

In regards to claims 3,11, and 15, Christensen teaches recording information for later purchase (col 6, lines 64-67), but does not specifically mention that the information is transmitted at a specific location. Moskowitz teaches storing purchase data and then transmitting the data at a gasoline dispensing device at a specific location

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(FIG 7). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Christensen transmitting purchase information at a specific location, because this will allow the vehicle download information when the vehicle is outside a broadcast area therefore assure that a transaction might be completed without missing a sale.

Response to Arguments

Applicant's arguments filed 9/24/2009 have been fully considered but they are not persuasive.

In regards to USC 112 rejection of claims 6 and 19, applicant directs the examiner to para 25 of the specification to support how the claim is further limited by the dependent claims. The examiner disagrees and notes that if there is no information about the purchase then the system is disabled and all that is claimed is a radio receiving a broadcast.

In regards to USC 112 rejection of claims 5 and 18, since in order for the system to order a good or service there must be information from the broadcast received either inherently or "overtly or explicitly", the claim is not further limited. Therefore the addition of a claim that specifically states that "the broadcast media includes information about the purchase of goods or services" does not further limit the claim since this condition is implicit in the independent claim.

Applicant argues that "broadcasting information that a party records" is not a fair representation of the independent claims. The examiner does not understand this

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argument since the instant claim stated "selectively recording purchase data at the broadcast radio receiver for the good or service..". Also, apparently applicant cannot identify the correlation between the instant invention and Christensen so for this reason the claimed features are mapped supra.

Applicant argues that Christensen is limited to music and speech, whereas the instant invention is not so limited. The examiner disagrees and notes that even if Christensen was so limited to only songs or speech, these products are included in the definition of goods or services and therefore the cited art teaches the limitation of the instant claim. However, it is further noted that as stated in col 4, lines 16-21 of Christensen, there is clear anticipation of the sale and purchase of products such as music. Furthermore, Christensen clearly does not teach such a limitation as is clearly found in col 11 lines 35-40.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**.

The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300 [Official communications; including

After Final communications labeled

"Box AF"]

For general questions the receptionist can be reached at

571.272.3600

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

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/Mark Fadok/

Primary Examiner, Art Unit 3625